

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS L. WILLIAMS,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No.: 3:19-cv-00715-MMD-WGC

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 6, 7, 8, 9

This Report and Recommendation is made to the Honorable Miranda M. Du, Chief United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

On December 2, 2019, Plaintiff, who is an inmate at the Washoe County Detention Facility (WCDF), filed a pro se civil rights complaint. (ECF No. 1.) It was not accompanied by an application to proceed in forma pauperis (IFP) and required financial certificate or the \$400 filing fee (\$350 filing fee and \$50 administrative fee). On December 13, 2019 the court issued an order directing the Clerk to send Plaintiff the instructions and application to proceed IFP for an inmate, and gave Plaintiff 30 days to file his completed IFP application and financial certificate or pay the full \$400 filing fee. (ECF No. 5.)

On December 18, 2019, Plaintiff filed a document titled: "Order to Show Cause For an Preliminary Injunction Civil Violations 4th 5th 6th 8th 14th." (ECF No. 6.) On the same day he filed a motion for appointment of counsel. (ECF No. 7.) On December 23, 2019, Plaintiff filed an application to proceed IFP for an inmate and financial certificate. (ECF No. 8.) On December 31, 2019, Plaintiff filed a second IFP application and financial certificate. (ECF No. 9.)

1 Plaintiff's complaint names as defendants: the State of Nevada, Reno Police Department,
2 Reno Police Department Detectives Jane Doe 1 and Jane Doe 2, Public Defender Jim Leslie, and
3 District Attorney Peg Samples. (ECF No. 1-1 at 1-3.)

4 In claim 1, Plaintiff alleges that on May 8, 2019, Reno Police detectives conducted a
5 controlled substances operation targeting Plaintiff. A confidential informant was fitted with a
6 wireless transmitter and provided with \$100. Plaintiff reiterates he was not arrested at that time.
7 He was arrested the following day, during a traffic stop when he was a passenger in a vehicle
8 driven by a subject who was known to the police as being involved in the sale of controlled
9 substances. Heroin was located in the vehicle. The driver (who was not the confidential informant)
10 was not cited or arrested. Plaintiff was arrested for possession of a controlled substance and
11 possession with intent, but was only arraigned on an unlawful sale charge that allegedly occurred
12 on May 8th. (ECF No. 1-1 at 4.)

13 In claim 2, Plaintiff alleges that on May 15, 2019, he invoked his Sixth Amendment right
14 to a preliminary hearing within fifteen days of arraignment. He states that an unspecified defendant
15 filed a motion in RJC (presumably Reno Justice Court) prior to the date and at the preliminary
16 hearing notified attorney Jim Leslie. He states that the prosecution filed a motion not to disclose
17 witnesses. Jim Leslie filed an adverse motion. The prosecution was given ten additional days and
18 after the ten days the attorney advised that the prosecution would offer probation capped at 12 to
19 30 months. He then states that Jim Leslie was conflicted off of the case on November 7, 2019.
20 (ECF No. 1-1 at 5.)

21 In claim 3, Plaintiff alleges that the supposed confidential informant is a friend of Plaintiff's
22 on Facebook. On June 20th, during Plaintiff's arraignment while he was entering his plea, the judge
23 read the pre-sentence report of Lamont Ontario Williams in reference to an agreement between

1 Plaintiff and the State. Plaintiff stated that he said his name was true and correct on line 7: Thomas
2 Lamont Williams. He states there is reason to believe that he was not arrested after the alleged
3 sales because another person with a similar name, Lamont Ontario Williams, was in custody on
4 two grand jury indictments was the defendant. The district attorney is still prosecuting Plaintiff.
5 (ECF No. 1-1 at 6.)

6 In each claim he references Fourth Amendment searches and seizures, due process under
7 the Fifth and Fourteenth Amendments, ineffective assistance of counsel under the Sixth
8 Amendment cruel and unusual punishment under the Eighth Amendment, and the Equal
9 Protection Clause of the Fourteenth Amendment.

10 While the court would normally address the IFP application and then screen the complaint,
11 it appears that Plaintiff is attempting to challenge his arrest and ongoing State criminal prosecution
12 in this federal court action. He is essentially seeking the federal court's interference in the ongoing
13 State prosecution. "In our American system of dual sovereignty, each sovereign-whether the
14 Federal Government or a State-is responsible for the administration of its own criminal justice
15 system." *United States v. Yepez*, 704 F.3d 1087, 1091 (9th Cir. 2012) (en banc) (internal citation
16 and quotation marks omitted). The Supreme Court has recognized the importance of adhering to a
17 "notion of 'comity,' that is, a proper respect for state functions, a recognition of the fact that the
18 entire country is made up of a Union of separate state governments, and a continuance of the belief
19 that the National Government will fare best if the States and their institutions are left free to
20 perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. 37, 44 (1971).
21 As such, the Supreme Court has long made clear that absent extraordinary circumstances federal
22 courts may not interfere with pending state criminal prosecutions even when they raise issues
23 regarding federal rights or interests.

1 It is not entirely clear whether Plaintiff is seeking to vindicate federal civil rights, habeas
2 review, or merely wants the issues he is challenging with respect to his criminal arrest and
3 prosecution addressed. If Plaintiff is truly asserting federal civil rights claims, then this action
4 should be dismissed without prejudice under *Younger*. If Plaintiff wishes to just have his
5 challenges to his arrest and prosecution litigated, Plaintiff's issues are more appropriately
6 addressed directly in his State law criminal case, and then in a direct criminal appeal, or
7 subsequently, via a State court habeas petition. Federal habeas review is only appropriate after
8 State administrative remedies have been exhausted.

9 For these reasons, the court recommends dismissal of this action without prejudice; denial
10 of the outstanding motions (including the applications to proceed IFP, motion for appointment of
11 counsel and motion for injunctive relief); and that this case be administratively closed.

12 **RECOMMENDATION**

13 **IT IS HEREBY RECOMMENDED** that the District Judge enter an order: **DISMISSING**
14 this action **WITHOUT PREJUDICE; DENYING** the outstanding motions (ECF Nos. 6, 7, 8, 9);
15 and administratively closing this action.

16 The Plaintiff should be aware of the following:

17 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
18 this Report and Recommendation within fourteen days of being served with a copy of the Report
19 and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report
20 and Recommendation" and should be accompanied by points and authorities for consideration by
21 the district judge.

